Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 6043 of 2001 (S/S)
(Old No. 31073 of 1995)

Krishna Prashad …… Petitioner

Versus

State and others …… Respondents

ALONG WITH

Civil Writ Petition No. 6042 of 2001 (S/S)

Warish Ali ……. Petitioner

Versus

The District Judge,
Dehradun and others …… Respondents

AND

Civil Writ Petition No. 6041 of 2001 (S/S)

Salik Ram …… Petitioner

Versus

State and others …… Respondents

Mr. V.K. Kohli, learned Senior Counsel assisted by
Mr. I.P. Kohli, learned counsel for the petitioners.
Mr. Rajendra Dobhal, learned counsel for the Registrar, High Court.
Mr. N.C. Gupta, learned Standing Counsel for the State.

Hon'ble P.C. Pant, J.

A common question of law is involved in all the three above mentioned writ petitions, as such these are being disposed of together by a single judgment.

2) By means of these writ petitions, moved under Article 226 of the Constitution of India, the petitioners have sought mandamus for promotion from the post of Class- IV to the post of Class- III in the Judgeship of Dehradun.

3. Brief facts of the case as narrated in the writ petitions are that the petitioners are Class- IV employees in the Civil Courts, Dehradun. All the three petitioners having essential qualification of High School, on completion of five years continuous service as Class- IV employee were qualified for promotion against the Class- III posts within the 15% quota permissible for said class of employees. As many as six vacancies existed in the Judgeship of Dehradun in the year 1992. And the petitioners along with other candidates appeared in the test got conducted by the District Judge through Special Judge, Dehradun and list of successful candidates was declared in which the petitioners names stood at serial number 4,5 and 6 amongst the successful candidates. The first three candidates namely, Bhupendra Singh Rawat, Sant Ram Nishad and Mela Ram Sharma were given appointment on Class- III post in the year 1992 itself while the petitioners were kept in waiting. The petitioners made several representations but to no avail. Instead, respondent Shankar Singh Rawat, brother of a Clerk working in Administrative office of the Judgeship of Dehradun and respondent Smt. Anita Pandey wife of a Driver of Judgeship of Dehradun were appointed on ad hoc basis as Class- III employees. It is further alleged in the writ petition that they were illegally regularised while the petitioners were left out, hence the writ petition. It is also mentioned in the writ petition that there are still number of vacancies lying in the said

Judgeship against the promotional quota of the Class- IV employees.

4) A counter affidavit was filed on behalf of the District Judge and the Registrar of the High Court of judicature at Allahabad in which it has been stated that in the year 1992-93 there was a 15% quota for Class- IV employees for their promotion to Class- III post vide Government Order No. 37/1/64-Ka-2/93 dated 21.08.1993 in the Establishment. In all 32 vacancies existed prior to the test conducted for promotion in the year 1992. It is further stated in the counter affidavit that there were five clear vacancies and the last person was to be accommodated against one of the next four vacancies to be falling vacant in further. Six candidates were admitted to have been selected which included the petitioner's names. It is further stated in the counter affidavit that the first three candidates were given appointment letters against the Class- III posts and rest were to be given promotion thereafter. It is undertaken in the counter affidavit that the petitioners are to be accommodated against the vacancies of the promotional quota of Class- IV employees but the answering respondents have cleverly avoided clear cut reply to the allegation that as to why respondents Shankar Singh Rawat and Smt. Anita Pandey have been appointed as ad ho clerks.

5) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit filed by the parties along with the annexures annexed thereto.

6) The short question for consideration before this Court is whether the petitioners are wrongly denied appointment in

Class- III posts even after passing the test for their appointment within the 15% promotional quota from the category of Class- IV employees/

7) Admittedly, the petitioners are Class- IV employees of the Civil Courts, Dehradun. It is also admitted that they fulfill the requisite qualification for the promotion from the post of Class- IV to the Class- III category as all the petitioners had passed the High School and completed five years experience as Class- IV employees. It is also not disputed that in the year 1992 a test was held under the orders of the then District Judge, Dehradun and six persons including the petitioners qualified the test. It is also not disputed that the first three employees were given the appointment in Class- III category while petitioners who were at serial number 4,5 and 6 were left out keeping them in waiting. The dispute relates as to why these three petitioners namely, Warish Ali, Krishna Prasad and Salik Ram were denied their appointments. From the report (copy Annexure-4 to the writ petition) of the Special Judge Dehradun, who conducted the test, it is clear that there were six vacancies in the clerical staff for the promotion of the Class- IV employees and the same number of persons were selected in the test. The order dated 05.02.1992 passed by the then District Judge appointing the first three selected candidates is annexed as Annexure- 5 (to the writ petition No. 6041 (S/S) of 2001 and 6043 (S/S) of 2001). In said order in the last para, the District Judge has ordered as under:-

> *"The other selected candidates from serial number 4 to 6 shall be considered for promotion in due course of time."*

8) Learned counsel for the respondent failed to explain that when the number of vacancies were six why arbitrarily the District Judge chose not to appoint the candidates selected at serial number 4, 5 and 6 (who are the petitioners). The District Judge has not mentioned any reason why he has not given the appointments to all the selected candidates when the number of vacancies were six against the promotional quota. Ad hoc appointment to others in such circumstances was more objectionable. Learned counsel for the petitioners during the argument submitted that still there are vacancies in Class- III posts in the Judgeship of Dehradun as against the promotional quota of Class- IV which the learned counsel for the respondent District Judge, Dehradun did not deny. In the circumstances, this Court finds the inaction of the part of the District Judge, Dehradun in not given the appointments to the petitioners as arbitrary and violative of Article 14 of the Constitution of India.

9) In the circumstances, in view of the above discussion, all the three writ petitions mentioned above deserve to be allowed. All the three writ petition are accordingly allowed. Mandamus is issued to the District Judge, Dehradun to issue appointment letters to the petitioners namely, Krishna Prasad, Warish Ali and Salik Ram, appointing them in Class- III posts from the selected list prepared in the year 1992 within a period of one month from today. No order as to costs.

(P.C. Pant, J.)

Dt. 23rd Sept. 2004.
H.Negi